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BOARD OF PHARMACY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JAMES MELCON, R.PH.
License No. 1652100

TO PRACTICE PHARMACY IN THE
STATE OF NEW JERSEY

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: Administrative Action
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: **CONSENT ORDER**
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This matter was opened to the New Jersey State Board of Pharmacy by James Melcon, R.Ph. and the Professional Assistance Program of New Jersey, Inc. (PAPNJ) upon notification to the Board that James Melcon had self-referred to PAPNJ on February 21, 2007, after he was confronted by his employer due to his diversion of Percocet and Dilaudid, both Schedule II Dangerous Controlled Substances.

Respondent appeared before the full Board and testified as to his diversion of medications and past treatment for substance

abuse for which he was ordered to surrender to the Board his license for six months, his present treatment with PAPNJ and his present efforts to maintain his sobriety. Respondent reported that he voluntarily refrained from practicing pharmacy since participation with PAPNJ. It appearing that respondent continues to attend support group meetings, is under the care of a therapist and continues to have drug and alcohol screens, but has presented numerous dilute screens without confirmation that they are negative from another source, and given the recent diversion of CDS, and that he acknowledges a relapse into the abuse of CDS and as respondent wishes to resolve this matter without the necessity of further formal proceedings, the parties have agreed to enter this Order. Therefore, to assure the protection of the public and the successful treatment of respondent, the Board has determined to actively suspend the license of respondent prior to his commencing practice again, and for good cause shown;

IT IS THEREFORE on this 5th day of *SEPTEMBER*, 2007,

ORDERED AND AGREED,

1. The license of respondent to practice pharmacy in New Jersey shall be suspended for two (2) years from the date of entry of this Order. The initial three (3) months shall be active and the remaining twenty-one (21) months shall be stayed and served as probation subject to compliance with paragraphs 2 through 9 herein. At the conclusion of three (3) months of active

suspension, assuming respondent continues to participate in all current treatment and that his urine monitoring is negative for all controlled substances, that all reports from the PAP are positive, and that he can demonstrate continued sobriety, his license shall be reinstated on probationary status for the remainder of the suspension period.

2. If respondent violates any of the provisions of paragraphs 3 through 10 herein, in addition to the provisions regarding suspension of license in paragraph 9 below, the Board may initiate proceedings to revoke his license to practice pharmacy.

3. (a) James Melcon shall submit to random urine monitoring a minimum of two (2) times per week at a laboratory facility approved by the Board for the first six (6) months after reinstatement and one (1) time per week for the duration of the probation. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b) All test results including any secondary test results shall be provided directly to Joanne Boyer, Executive

Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Joanne Boyer, or her designee. Personnel at the lab facility or the PAPNJ shall not be authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall create a rebuttable presumption of a confirmed positive urine test. Such specimen shall be immediately subjected to the confirming GC/MS test.

(f) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

4. Respondent shall continue his participation with the PAPNJ and shall have monthly face-to-face contact with representatives from that program. Respondent shall comply with aftercare as directed by the PAPNJ and shall comply with any recommended therapeutic regimen for treatment or counseling. Respondent shall be responsible for ensuring that any treating psychiatrist/psychologist and any other person(s) providing therapy

for his substance abuse provide quarterly reports regarding his progress in counseling directly to the board.

5. Respondent shall attend support groups, including NA or AA not less than three (3) times per week. Respondent shall provide evidence of attendance at such groups directly to the Board. If respondent discontinues attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

6. Respondent shall abstain from the use of alcohol and controlled dangerous substances and shall not possess any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent shall cause any physician or dentist who prescribes medication for him which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

7. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment

or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to, and utilized by the Board in a timely manner.

8. Respondent shall give written notice to the Board, and provide a written copy of this complete Order to his employer, prior to beginning or changing any employment. Respondent shall insure that each employer shall provide written notice to the Board that he or she has reviewed this Order.

9. (a) Respondent shall be subject to an order of automatic suspension of his license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this Consent Order, including but not limited to a report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

10. Respondent shall not be a pharmacist-in-charge, a preceptor or a permit holder for the duration of the probation.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward McGinley
Edward McGinley, R.Ph.
President

I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

James L. Melcon
James L. Melcon, R.Ph.